



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,453	12/08/2003	Robert J. Ferrand	8266-1170	2297
25267	7590	11/09/2004	EXAMINER	
BOSE MCKINNEY & EVANS LLP 135 N PENNSYLVANIA ST SUITE 2700 INDIANAPOLIS, IN 46204				TRETTEL, MICHAEL
		ART UNIT		PAPER NUMBER
				3673

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/730,453	FERRAND ET AL. <i>MW</i>	
	Examiner	Art Unit	
	Michael Trettel	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 August 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 28,30 and 43-47 is/are allowed.
 6) Claim(s) 1-27,29,31-42,48-51 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

The amendment filed on April 4, 2004 is still objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: there is no support in the originally filed disclosure for the assertion that the claimed controller is configured to slide along or move along either the first or second barrier.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 1 to 9, 11, 13, 24, and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As mentioned earlier, there is no support in the originally filed disclosure for the claimed subject matter stating that the controller is configured to slide along or move along either the first or second barrier.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4-9, 16-22, 29, 31 to 36, and 48 to 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins (4,484,367). Jenkins shows a nurse call apparatus that includes a controller in the form of nurse call device 42 supported upon a bed side guard 40 by a textile holder 10. The holder 10 comprises a flexible sheet 12 that is of sufficient length to wrap around the side guard 40 and includes overlapped ends 18, 20 that are removably attached to one another by hook and loop fastening strips 35, 36. The side guard includes spaced upper and lower rails that create a recess or opening that the holder 10 bridges across, since the holder is flexible it forms concave interior surfaces that engage the convex surfaces formed by the rails of the side guard. A pocket 26 is placed on the interior surface of the sheet 12 to receive and hold the nurse call device. Note that the device is inherently slid able or can be moved along the length of the side guard, as disclosed in column 3, lines 44 to 48 an adhesive can be applied to the rails of the side guard to prevent movement of the holder relative to the rails. The adhesive though is optional in use, and does not form a limitation upon movement of the holder along the side guard. The pocket 26 can be considered to form a retainer or a recess, with the body of the nurse call device 42 forming a housing which can inherently be set at differing positions along a longitudinal axis formed by the length of the bed side guard. Alternately, the pocket 26 can be considered to be a housing affixed to a flexible portion formed by the textile holder 10. The pocket 26 is also directly under the upper rail of the side guard when viewed from a side elevation of the combination of the sideguard and holder 10 (Figure 3).

Claim Rejections - 35 USC § 103

Claims 10-15, 23-27, 37 to 42, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins ((4,484,367). The Jenkins patent shows only a single side guard being used along one side of the bed. It is very well known in the art to use pairs of side guards along both sides of a hospital bed for prevention of movement of either side of the bed, and it certainly would have been obvious to the skilled artisan to have used the Jenkins nurse call apparatus upon any one of either side guards used upon a hospital bed that includes an opposed pair of side guards.

Allowable Subject Matter

Claims 28, 30, and 43 to 47 are allowed.

Response to Arguments

Applicant's arguments filed August 23, 2004 have been fully considered but they are not persuasive. The applicant has presented an argument that the subject matter of the present application is inherently capable of supporting the claims as presented, however no analysis of the claimed subject matter with respect to the structural details set forth within the specification and drawings has been presented. The argument is unpersuasive for this reason-if the subject matter is in fact inherently supported by the disclosure it should be relatively trivial to demonstrate by analysis how the disclosure is enabling or provides support for the claimed subject matter. Mere assertion alone as is being done in the arguments does not suffice and does not overcome the objections and rejections based upon new matter.

With regards to the assertion that the examiner in the present case is bound by the decisions and/or arguments presented by a differing examiner in a separate but related application, this argument is also unpersuasive. Each application is decided upon its own merits, the examiner is not aware of any Office doctrine, rule, or decision which states that once an interpretation of a reference is made by any one of the thousands of USPTO examiners all remaining USPTO examiners are now bound by that particular interpretation. If the applicant is aware of support for this position he is invited to bring it to the attention of the examiner, as it now stands this argument does not bear any weight.

The arguments presented concerning the §102 and §103 rejections have been reviewed and are unpersuasive. The applicant's arguments are essentially narrower than the claims, and read structural details into the claims that are present only within the specification. In claim 1, the recess can be interpreted as being the pocket 26 of the control holder 10-since the control holder 10 is mounted upon the side rail it can be considered part of the claimed barrier. In claim 6 the opening can be considered to be the hollow area between the upper and lower rails of the side guard, with the inner surfaces of the rails defining the interior surface. Since the holder can slide along the upper and lower rails it also slides relative to the interior surfaces-there is no language present in the claims that state that the controller is actually received within the opening and/or bears against the interior surface. The limitations added to claims 16 and 29 have been addressed within the rejection. In claim 10 pocket 26 can be interpreted as being the equivalent of the claimed opening. The same is true of claim 23-the applicant is reading limitations present within the specification into the claim. As written either one of the openings of claim 23 can be read upon the pocket 26 of the Jenkins device, since claim

23 is only duplicating previously claimed features so that they read upon two barriers the subject matter of this claim is considered to be obvious.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

michael trettel
Michael Trettel
Primary Examiner
Art Unit 3673